

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

***In the Matter of Applications of Charter Communications, Inc., Time Warner Cable Inc., and  
Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and  
Authorizations, MB Docket No. 15-149***

**COMMENTS OF  
AMERICAN COMMITMENT<sup>1</sup>**

The proposed merger of Charter Communications (Charter), Time Warner Cable, Inc. (TWC) and Bright House Networks (BHN) into a new combined entity (New Charter) is a straightforward consequence of the Commission's decision to block the acquisition of TWC by Comcast earlier this year. A review of the record makes it clear that the transaction should be approved.

This merger raises none of the purported issues used to block the Comcast deal. There is no legitimate anticompetitive concern. TWC and BHN are already affiliated.<sup>2</sup> Charter will only add only about a million subscribers in top 20 designated market areas (DMAs) and will be the largest Multichannel Video Programming Distributor (MVPD) in just four markets.<sup>3</sup> Under the broadband definition of 25 megabytes per second adopted by the Commission for the purposes of thwarting the Comcast-TWC deal, New Charter would have a market share well below the 30 percent level.<sup>4</sup>

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<sup>1</sup> American Commitment is a national free market advocacy organization that engages in critical public policy fights over the size and intrusiveness of government through direct advocacy, strategic policy analysis, and grassroots mobilization. Working with key partners, American Commitment delivers timely, effective public policy research to the broader free-market movement. These comments were prepared by American Commitment's president Phil Kerpen.

<sup>2</sup> Jeff John Roberts, "Why The Latest Cable Merger Won't Crash And Burn Like Comcast," *Fortune*, 5/26/15. <http://fortune.com/2015/05/26/charter-merger-antitrust-versus-comcast-twc/>

<sup>3</sup> Matt Hamblen, "Charter-Time Warner Deal Would Get Tough Regulatory Scrutiny," *Computer World*, 5/26/15. <http://www.computerworld.com/article/2926226/networking/charter-time-warner-deal-would-get-tough-regulatory-scrutiny.html>

<sup>4</sup> "New Charter Smaller Than Comcast Today," Charter Communications, 9/1/15. <https://charterresourcecenter.com/wp-content/uploads/2015/09/Charter-Smaller-Than-Comcast-Today.pdf>

New Charter will have fewer total broadband customers than Comcast and will trail both AT&T and Comcast in video market share, serving only 17 percent to Comcast's 22 percent and AT&T's 26 percent<sup>5</sup>, the latter a level recently acceptable to the Commission in that company's recent merger review. New Charter will not own any national video programming.

Moreover, any unnecessary conditions or delays would create economic and consumer harm. New Charter has committed to move offshore TWC call center jobs to the U.S., continuing Charter's rapid expansion of its U.S workforce, which has increased over 40 percent 16,500 to 23,500 employees in the past three years.<sup>6</sup> The company's focus on U.S.-based customer service has resulted in significantly high customer satisfaction. Charter's minimum broadband speed of 60 megabytes per second is a substantial upgrade for most TWC customers and is priced lower than TWC's slower plans with a simpler pricing structure without data caps, modem rental fees, or early termination charges.

New Charter has announced plans to increase its WiFi deployment with over 300,000 out-of-home access points, increase competition and consumer choice for mobile data.<sup>7</sup> TWC and BHN are still dedicating significant network capacity to analog video distribution, which New Charter intends to rapidly transition to digital, freeing up capacity for additional high-definition channels and broadband capacity. New Charter has also committed to invest \$2.5 billion in commercial areas, offering higher capacity and more competition in the commercial sector.<sup>8</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> "Frequently Asked Questions about New Charter," Charter Communications, 9/1/15. <https://charterresourcecenter.com/wp-content/uploads/2015/09/Frequently-Asked-Questions-About-New-Charter.pdf>

<sup>7</sup> John Eggerton, "Charter Files Application for Time Warner Cable Merger," *Broadcasting & Cable*, 6/25/15. <http://www.broadcastingcable.com/news/washington/charter-files-application-time-warner-cable-merger/142100>

<sup>8</sup> Ibid.

Given the lack of any legitimate competition issues, the Commission should refrain from abusing its transaction review process to pursue unrelated policy concessions. There is now a considerable body of evidence indicating that doing so has become a central feature of the agency's regulatory process. A recent study by the Phoenix Center for Advanced Legal & Economic Public Policy Studies found that merger reviews have become central to a regulatory bargaining process that bundles multiple unrelated issues, undermining predictability, accountability, and the rule of law.<sup>9</sup>

This transaction should not be subject to such negotiation. New Charter will simply not have market power, undercutting any legitimate rationale for placing conditions on the merger.

We are especially concerned that the Commission may ask for an extraneous policy commitment that would bar New Charter from participating in the ongoing legal challenge to the Commission's order reclassifying broadband Internet service as a regulated public utility under Title II of the Communications Act of 1934, or would require New Charter to submit to such regulation "voluntarily" in the event that it is struck down in court or blocked by Congress.

American Commitment had mobilized more than a million Americans in opposition to the Title II order, which as you know is an ideological flashpoint across the political spectrum. The order is being reviewed in appropriate legal and congressional channels and it would be an abuse of the Commission's authority to seek to short-circuit those reviews by bundling a commitment from New Charter into what should be a simple, straightforward approval of an uncontroversial transaction.

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<sup>9</sup> T.M. Koutsky and L.J. Spiwak, Separating Politics from Policy in FCC Merger Reviews: A Basic Legal Primer of The "Public Interest" Standard, Phoenix Center for Advanced Legal & Economic Public Policy Studies, 6/17/10.  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1626370](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1626370)